

REMARKS

The Office Action dated July 14, 2005 (hereinafter "Office Action") has been carefully reviewed. Claims 1-16 are pending in this patent application. By this amendment, claims 1-16 have been canceled, and claims 17-32 have been added. Reconsideration of this application, as amended, is respectfully requested.

Amendment to Figures 4, 5, 9, and 10

Figures 4, 5, 9, and 10 have been amended to remove the "extraneous matter" as shown crossed out in red ink in the Attachment as requested by the Examiner. Figures 5 and 10 have been further amended to show pin 51 as shown in red in the Attachments. Replacement sheets showing the amendments are also included.

Amendment to Specification

The specification has been amended to include the reference character "T" on page 8. Applicants point out that the specification already includes the reference character "A" on page 7, line 9 which states that "FIG. 6 is an enlarged cross-sectional view of a portion A in FIG. 5. The specification has further been amended on page 8 to specifically call out a reference numeral for the pin (i.e. pin 51). Also, page 10 has been amended to correct a typographical error.

35 U.S.C. § 102 Rejection

Claims 1-16 were rejected under 35 U.S.C. § 102 or § 103 over one or more of the following: Ritter et al. (U.S. Patent No. 5,464,406) and Fraser et al. (U.S. Patent Publication Number 2002/0116009). However, these claims have been canceled.

Newly Added Claims 17-32

Newly added claims 17-32 recite novel and nonobvious limitations. Thus, each of claims 17-32 is allowable over the cited art. For example, newly added claim 17 reads as follows:

17. A method for establishing a gap between a femur and a tibia at a knee joint, comprising:
 providing an instrument having a positioning member that defines (i) a femur facing side, (ii) a tibia facing side, and a guide slot configured to receive an intramedullary member, said positioning member including a first coupler;
 providing an augment having a second coupler configured to cooperate with the first coupler to connect the augment to the positioning member;
 coupling the second coupler of the augment to the first coupler of the positioning member so that the augment and the positioning member are attached together;
 providing an intramedullary member;
 disposing the intramedullary member within an intramedullary canal of the tibia; and
 locating the positioning member and the augment within the gap defined between the femur and the tibia while the augment and the positioning member are attached together so that (i) the femur facing side of the positioning member faces the femur, (ii) the tibia facing side of the positioning member faces the tibia, and (iii) the intramedullary member is received within the guide slot of the positioning member of the instrument.

Ritter does not disclose each of the limitations set forth in new claim 17. Significantly, the Examiner identifies Ritter's intramedullary rod 30 as being equated with the claimed *instrument having a positioning member* (see Office Action at page 3, line 11). However, among many other distinctions, Ritter's

intramedullary rod 30 does not possess a guide slot that receives an intramedullary member that is disposed in a tibial canal. Indeed, it appears that the entire intramedullary rod 30 is retained entirely within the intramedullary canal of the femur. It is axiomatic that anticipation of a claim under 35 U.S.C. § 102 is proper only if the prior art reference discloses each and every element of the claim. Since Ritter does not disclose each and every element of Applicant's new claim 17, Ritter does not anticipate Applicant's amended claim 1.

Conclusion

In view of the foregoing amendments and remarks, it is submitted that this application is in condition for allowance. Action to that end is hereby solicited.

Respectfully submitted,

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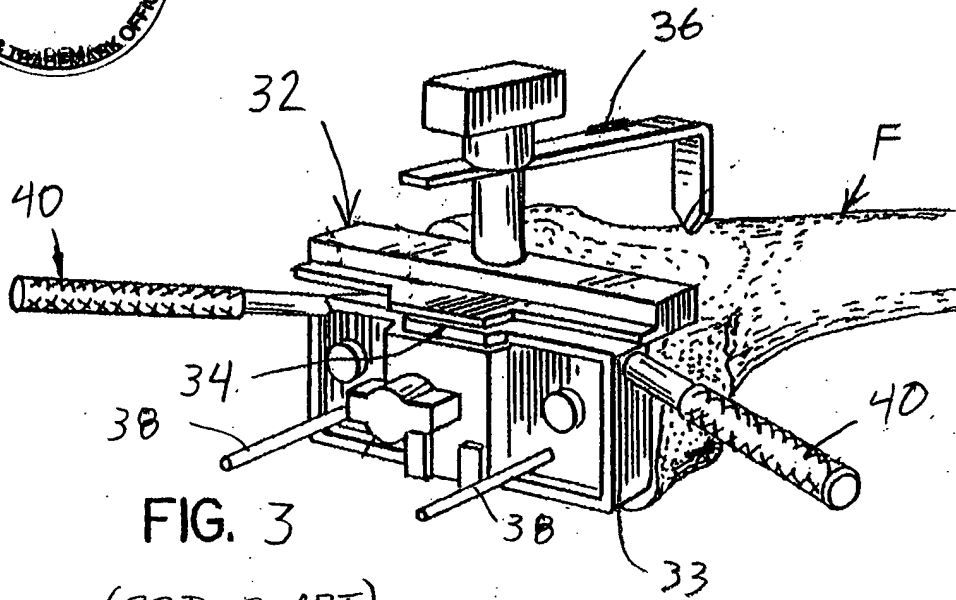


FIG. 3
(PRIOR ART)

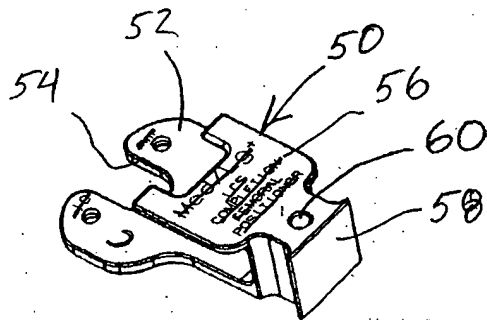


FIG. 4

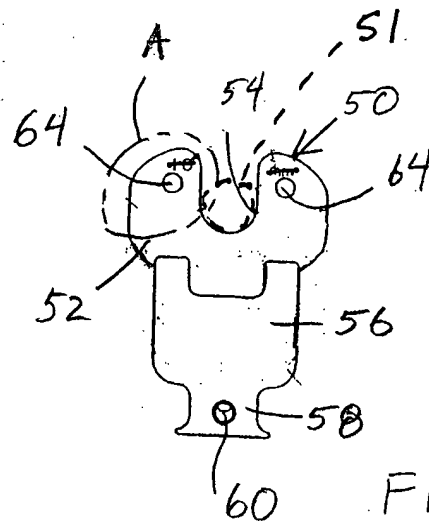


FIG. 5

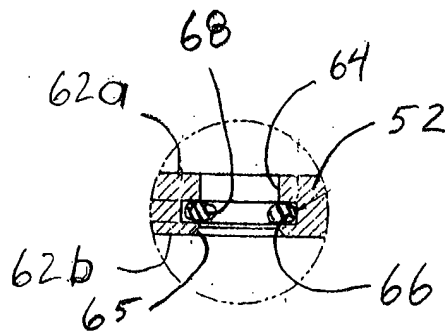


FIG. 6

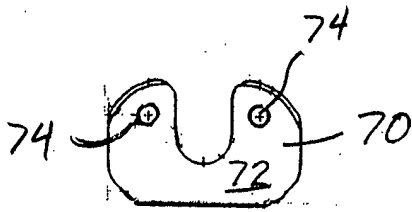


FIG. 7

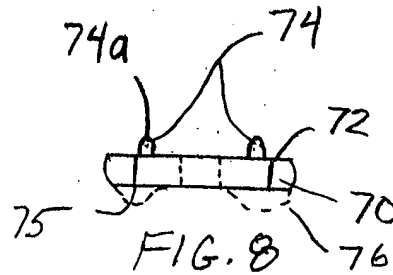


FIG. 8

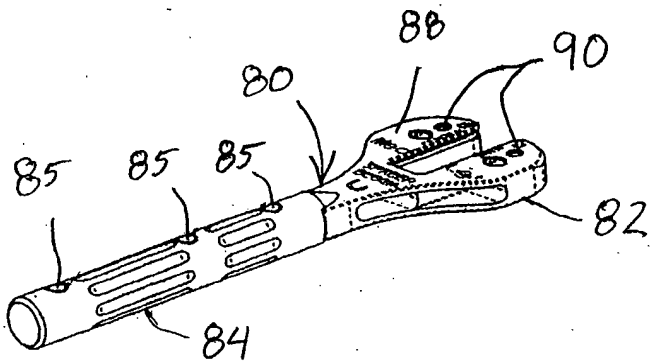


FIG. 9

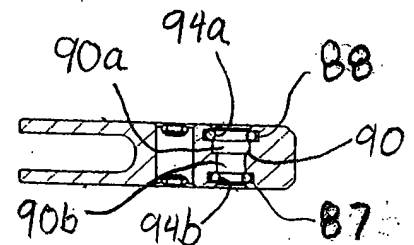


FIG. 12

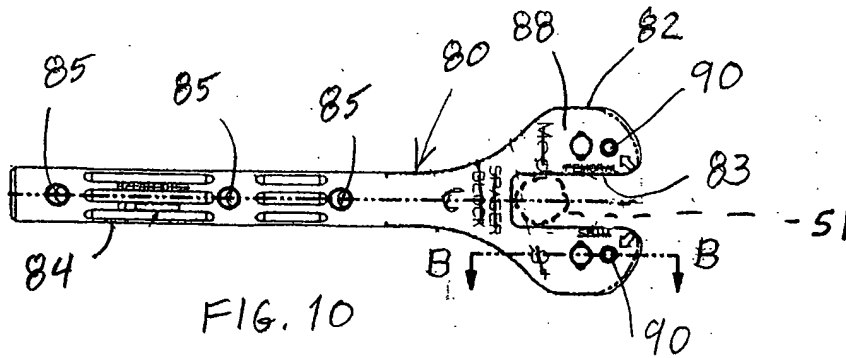


FIG. 10

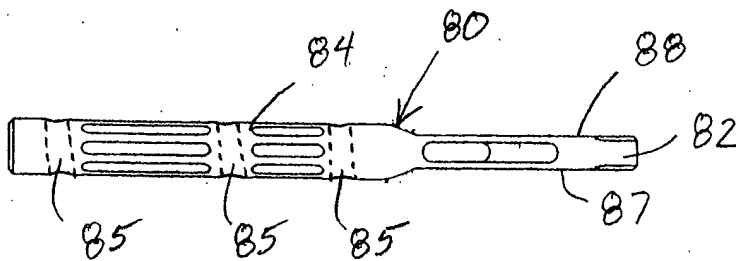


FIG. 11